

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8007 OF 2004**

M/s Champion Power Controls ... Petitioners (Madras) Ltd & ors

vs

M/s Aar-em Elec.Pvt.Ltd

... Respondents

..

Mr.P.K.Hushing for Petitioners

Mr.S.J.Rairkar for Respondents

..

**Coram : A.S.Oka, J**

**Date: 10th December, 2004.**

**P.C.**

1. Rule. The Advocate for the Respondent waives service. Considering the facts and circumstances of the case, petition is forthwith taken up for final disposal. Heard Advocate for the petitioners.

2. The petitioners have taken exception to the order dated 31st March, 2004 passed by the trial Judge below Application at Exhibit 28. The petitioners are defendants in a money suit filed by the respondent-plaintiff. The petitioner could not file the written statement within the time stipulated and therefore the trial court passed an order that the suit will proceed without written statement. On 22nd August, 2003 the petitioner filed an Application at Exhibit 28 for setting aside the aforesaid order passed by the trial court and for permission

to file the written statement cum counter claim. The learned trial Judge applied the provisions of Rule 1 of Order 8 of the Code of Civil Procedure 1908 as amended by the Amending Act of 2002 and held that the extension of time to file the written statement cannot be granted beyond the stipulated period of 90 days.

3. Mr. Hushing learned counsel for the petitioners submitted that the suit is filed before the Amendment Act of 2002 came into force i.e. before 1st July, 2002 and hence the amended provisions of the Code were not applicable to the suit. He submitted that in any event sufficient cause was made out in the Application at Exhibit 28 for setting aside the order to proceed with the suit without the written statement.

4. Learned counsel for the Respondent has invited my attention to the impugned order and submitted that there is a gross negligence on the part of the petitioners and hence the learned Judge was justified in rejecting the application.

5. I have considered the rival submissions. The suit was filed prior to 1st July, 2002 and therefore in my view the learned Judge could not have applied the provision of Rule 1 of Order 8 of the Code of Civil Procedure 1908 as amended by the Amendment Act of 2002. In any event after the amended rule has come into force, it is well settled that the civil court has power to extend the statutory period fixed for filing written statement in exceptional or extra ordinary circumstances.

6. The case of the petitioner is that the petitioner are having office at Chennai, in the State of Tamil Nadu. The suit which is filed in court at Pune involves complicated questions of facts and law and time was required to go through

o the voluminous records and instruct the Advocate.

7. In my view, the explanation given by the petitioners for delay was sufficient for the trial court to exercise the discretion in favour of the petitioners. The prejudice if any to the respondents could have been compensated by ordering payment of substantial costs. In the

circumstances, petition deserves to succeed. The petitioners will have to pay the costs of Rs.5000/- to the respondent.

8. Hence, I pass the following order :

(i) The impugned order dated 31st March, 2004 is quashed and set aside ;

(ii) the Application made by the petitioners at Exhibit 28 is allowed.

(iii) The petitioners are directed to deposit Rs.5000/- by way of costs payable to the respondents in the trial court within four weeks from today. If the amount is deposited within the stipulated time, the trial court is directed to take on record the alleged written statement cum counter claim which is tendered alongwith the Application Exhibit 28.

(iv) If the amount of costs is not deposited within the stipulated time the impugned order will stand confirmed. If the amount is deposited within the stipulated time, the respondents will be entitled to withdraw the same.

(v) Rule is made absolute in the above terms.

9. Parties to act on an authenticated copy of this order

**A.S.OKA, J**